

MONTANA LEGISLATIVE HISTORY

Chapter 153 19 83

Bill H _____ S 177 Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Mar 04 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Mar 04 ☒ C

S. Committee on Judiciary

Hearing Date(s) Jan 27 ☒ C

Feb 02 ☒ C

_____ ☐ C

_____ ☐ C

Feb 02 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

IN SUPPORT OF HIS FAMILY IS EXEMPT FROM EXECUTION TO SATISFY JUDGMENTS OR ORDERS FOR
MAINTENANCE OR CHILD SUPPORT ONLY TO THE EXTENT ALLOWED BY FEDERAL LAW

INTRODUCED: 01/17/83

REFERRED TO COMMITTEE ON JUDICIARY: 01/17/83

HEARING: 1/27/83

REPORT: 02/08/83, DO PASS, AS AMENDED

2ND READING: 02/10/83 AYES: 50; NAYS: 0

3RD READING: 02/12/83 AYES: 48; NAYS: 0

TRANSMITTED TO HOUSE: 2/12/83

REFERRED TO COMMITTEE ON JUDICIARY: 02/14/83

HEARING: 3/4/84

REPORT: 03/05/83, BE CONCURRED IN, AS AMENDED

2ND READING: 03/07/83, BE CONCURRED IN AYES: 87; NAYS: 0

3RD READING: 03/08/83, BE CONCURRED IN AYES: 95; NAYS: 4

RETURNED TO SENATE WITH AMENDMENTS: 3/9/83

2ND READING: 03/10/83 AYES: 49; NAYS: 0

3RD READING: 03/11/83 AYES: 48; NAYS: 0

TRANSMITTED TO GOVERNOR: 03/18/83

SIGNED: 03/22/83, CHAPTER 153

178 -- VAN VALKENBURG -- TO PROVIDE THAT A PERSON WHO IS EMPLOYED BY A COUNTY OR
MUNICIPALITY MAY DESIGNATE A PERSON TO CLAIM ANY WARRANTS OR PAYCHECKS DUE THE
EMPLOYEE ON THE DEATH OF SUCH EMPLOYEE.

INTRODUCED: 01/17/83

REFERRED TO COMMITTEE ON JUDICIARY: 01/17/83

HEARING: 1/27/83

REPORT: 01/27/83, DO PASS

2ND READING: 01/29/83 AYES: 46; NAYS: 0

3RD READING: 02/01/83 AYES: 48; NAYS: 0

TRANSMITTED TO HOUSE: 2/1/83

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 02/02/83

HEARING: 3/3/83

REPORT: 03/04/83, BE CONCURRED IN

2ND READING: 03/05/83, BE CONCURRED IN AYES: 86; NAYS: 1

3RD READING: 03/07/83, BE CONCURRED IN AYES: 95; NAYS: 1

RETURNED TO SENATE: 3/7/83

TRANSMITTED TO GOVERNOR: 03/15/83

SIGNED: 03/17/83, CHAPTER 113

179 -- STIMATZ -- TO EXEMPT PUBLIC AGENCIES FROM THE MARITAL STATUS
ANTIDISCRIMINATION IN EMPLOYMENT LAWS WHENEVER THESE LAWS CONFLICT WITH THE
PROHIBITIONS AGAINST NEPOTISM IN PUBLIC AGENCIES

INTRODUCED: 01/17/83

REFERRED TO COMMITTEE ON JUDICIARY: 01/17/83

HEARING: 1/27/83

DIED IN COMMITTEE

180 -- MAZUREK -- TO GENERALLY REVISE THE REQUIREMENTS FOR PREMARITAL SEROLOGICAL

TRANSMITTED TO HOUSE: 02/23/83

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 02/28/83

HEARING: 3/15/83

REPORT: 03/17/83, BE CONCURRED IN

2ND READING: 03/21/83, BE CONCURRED IN

AYES: 54; NAYS: 21

3RD READING: 03/22/83, BE CONCURRED IN

AYES: 67; NAYS: 26

RETURNED TO SENATE: 3/22/83

TRANSMITTED TO GOVERNOR: 03/28/83

SIGNED: 03/30/83, CHAPTER 294

SB 174 -- HIMSL, ELLIOTT -- TO ELIMINATE THE REQUIREMENT THAT A CORPORATION MUST
A RATIO OF CURRENT ASSETS TO CURRENT LIABILITIES OF AT LEAST 1-1/2 TO 1 BEFORE
INVESTMENT OF PUBLIC FUNDS CAN BE MADE IN THE CORPORATE COMMERCIAL PAPER OF THE
CORPORATION

BY REQUEST OF: THE BOARD OF INVESTMENTS

INTRODUCED: 01/17/83

REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 01/17/83

HEARING: 1/28/83

REPORT: 01/29/83, DO PASS, AS AMENDED

2ND READING: 02/01/83

AYES: 39; NAYS: 5

3RD READING: 02/03/83

AYES: 42; NAYS: 8

TRANSMITTED TO HOUSE: 2/3/83

REFERRED TO SELECT COMMITTEE ON ECONOMIC DEVELOPMENT: 02/04/83

REREFERRED TO COMMITTEE ON BUSINESS & INDUSTRY: 3/3/83

HEARING: 3/21/83

REPORT: 03/21/83, BE CONCURRED IN

2ND READING: 03/22/83, BE CONCURRED IN

AYES: 73; NAYS: 1

3RD READING: 03/23/83, BE CONCURRED IN

AYES: 91; NAYS: 3

RETURNED TO SENATE: 3/23/83

TRANSMITTED TO GOVERNOR: 03/30/83

SIGNED: 04/04/83, CHAPTER 358

SB 175 -- ELLIOTT, MARBUT, MAZUREK -- INCREASING THE MAXIMUM MILL LEVY FOR COLLEGE
LIBRARY SERVICES

INTRODUCED: 01/17/83

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 01/17/83

HEARING: 1/22/83

DIED IN COMMITTEE

SB 176 -- MARBUT, BOB BROWN, HALLIGAN, ET AL. -- TO REQUIRE THAT A CERTIFICATE
SURVEY INCLUDE DIAGRAMS OF ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD AT THE TIME
CERTIFICATE IS FILED

INTRODUCED: 01/17/83

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 01/17/83

HEARING: 1/22/83

REPORT: 02/03/83, DO NOT PASS. REPORT ADOPTED.

BILL KILLED.

SB 177 -- VAN VALKENBURG -- TO PROVIDE THAT INCOME OF A JUDGMENT DEBTOR NECESSARY

aftercare counselor was fine with Senator VanValkenburg.

Chairman Turnage felt it would be more appropriate to use the language on page 5, lines 4 and 5 of the introduced bill, but to require notice to the Department of Institutions.

There being further discussion, the hearing on SB168 was closed.

CONSIDERATION OF SENATE BILL 177: Senator VanValkenburg, sponsor of the bill, advised that it would amend the statutes of the law that deal with execution on judgment; in particular, to the exemption of the earnings of the judgment debtor. He cited the case of White v. White as being the need for this bill and distributed the Supreme Court opinion in the case (Exhibit "A"). He felt it would be good public policy to prohibit an exemption of the earnings of a judgment debtor on child support and maintenance.

Lon Dale, the attorney for the plaintiff in the case of White v. White, supported the concept of SB168. However, he felt it should be amended to establish a limit to the attachable income which would coincide with federal statutory limits. He then distributed a USC Section dealing with the restricting on garnishment (Exhibit "B").

Senator VanValkenburg advised that he had not had a chance to review Lon Dale's proposed amendment and requested time to do so before the Committee takes any action.

There being no further proponents, and no opponents, the hearing on SB177 was closed.

CONSIDERATION OF SENATE BILL 178: Senator VanValkenburg introduced this bill in order to allow local government the same authority that now exists in the state government to disburse warrants and paychecks due an employee in the event of his death. He felt that a family should not have to wait for lengthy probate proceedings before receiving the check.

Michael Schestedt, a Deputy County Attorney from Missoula, spoke as a proponent to this bill. Currently there is no lawful way to distribute an employee's last paycheck other than by probate and this bill would solve that problem.

Jim Nugent, City Attorney for the City of Missoula, also spoke in support of SB178. He has come in contact with this situation several times and felt there was no reason for withholding the employee's last check.

There being no further proponents, and no opponents, the hearing on SB178 was closed.

the problem. She felt HB501 would more effectively clarify the statutes. She urged a do not pass recommendation of SB179 from the Committee.

Wes Krawczyk, representing the American Civil Liberties Union, strongly opposed this bill and stated that state government should set examples.

There being no further proponents or opponents, the hearing was opened to questions from the Committee.

Senator Crippen questioned Wes Krawczyk as to what proposals the A.C.L.U. would have to handle this catch-22 situation. Wes Krawczyk advised that he had no alternative suggestions but would consult with his staff.

There being no further discussion by the Committee, the hearing was closed.

The Chairman announced the Committee was now ready to take executive action on bills previously heard.

DISPOSITION OF SENATE BILL 178: Senator Berg moved that SB178 DO PASS. This motion carried unanimously.

DISPOSITION OF SENATE BILL 260: The Committee discussed the possibilities of amending the bill to cover additional and specific areas. Chairman Turnage felt the bill is broad enough as it now reads. Senator Halligan moved SB260 DO PASS. This motion passed unanimously.

FURTHER CONSIDERATION OF SENATE BILL 177: The Committee expressed a concern with injecting federal laws into the statute. The bill was referred to counsel for review.

FURTHER CONSIDERATION OF HOUSE BILL 53: Counsel explained the amendments as prepared for the Committee. The amendments would eliminate the confusing penalty language as now written in the bill. Senator Mazurek added that the amendment should also include the change of "defendant" to drawer". The Committee agreed with this. Senator Crippen moved to adopt the amendments as now proposed. This motion passed unanimously. Senator Daniels requested a "grey" copy of the bill before voting on its passage. The Committee concented to delay disposition until its receipt of the "grey" copy.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 11:40.

JEAN A. TURNAGE
Chairman, Judiciary Committee

JUDICIARY COMMITTEE

Date 1-27-83

[illegible]

No. 81-256

IN THE SUPREME COURT OF THE STATE OF MONTANA

1981

MILDRED WHITE,

Plaintiff and Appellant,

-vs-

MANUEL WHITE,

Defendant and Respondent.

Appeal from: District Court of the First Judicial District,
In and for the County of Lewis & Clark, The
Honorable Gordon R. Bennett, Judge presiding.

15 USCS § 1672, n 3

COMMERCE AND TRADE

transaction outside scope of Federal restrictions on garnishment [15 USCS § 1671 et seq.] *Atwater v Rouddebush* (1976, ND Ill) 452 F Supp 622.

Term "garnishment," as defined in 15 USCS § 1672(c), is not restricted but includes any legal or equitable procedure through which earnings of individual are required to be withheld for payment of any debt, thus encompassing orders of support as well as ordinary creditor-debtor

garnishments. *General Motors Acceptance Corp. v Metropolitan Opera Asso.* (1978) 98 Misc 2d 307, 413 NYS2d 818.

Annotation:

Validity, construction, and application of §§ 301-307 of Consumer Credit Protection Act (15 USCS §§ 1671-1677) placing restrictions on garnishment of individual's earnings. 14 ALR3d 447.

§ 1673. Restriction on garnishment

(a) **Maximum allowable garnishment.** Except as provided in subsection (b) and in section 305 [15 USCS § 1675], the maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 [29 USCS § 206(a)(1)] in effect at the time the earnings are payable,

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) **Exceptions.** (1) The restrictions of subsection (a) do not apply in the case of—

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11 of the United States Code [11 USCS §§ 1301 et seq.]

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

(c) Execution or enforcement of garnishment order or process prohibited. No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section.

(May 29, 1968, P. L. 90-321, Title III, § 303, 82 Stat. 163; May 23, 1977, P. L. 95-30, Title V, § 501(e)(1)-(3), 91 Stat. 161; Nov. 6, 1978, P. L. 95-598, Title III, § 312(a), 92 Stat. 2676.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Effective date of section:

Section effective July 1, 1970; see note to 15 USCS § 1671.

Amendments:

1977. Act May 23, 1977 (effective the first day of the first calendar month after May 23, 1977 as provided by § 501(e)(5) of such Act), in subsec. (b), added "(1)", redesignated clauses (1), (2), and (3) as clauses (A), (B) and (C), respectively, and substituted "for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review" for "of any court for the support of any person" in clause (A) as redesignated, and added para. (2); and, in subsec. (c), added "", and no State (or officer or agency thereof)."

1978. Act Nov. 6, 1978 (effective Oct. 1, 1979, as provided by § 402(a) of such Act which appears as a note prece 11 USCS § 101), in subsec. (b)(1)(B), substituted "court of the United States having jurisdiction over cases under chapter 13 of title 11 of the United States Code" for "court of bankruptcy under Chapter XIII of the Bankruptcy Act".

CODE OF FEDERAL REGULATIONS

Implementation of the Consumer Credit Protection Act with respect to air carriers and foreign air carriers, 14 CFR Part 374.

CROSS REFERENCES

Findings of Congress and purpose of Act, 15 USCS § 1671.

Definitions of "earnings," "disposable earnings," and "garnishment," 15 USCS § 1672.

Restriction on discharge from employment by reason of garnishment, 15 USCS § 1674.

Exemption of state-regulated garnishment, 15 USCS § 1675.

There being no further discussion, the hearing was closed.

ACTION ON SENATE BILL 26: Senator Mazurek explained the effective dates section of the bill. He then moved to amend SB26 in total as set forth in the "grey" copy. This motion passed unanimously. Senator Mazurek then moved that SB26 DO PASS AS AMENDED. This motion also passed unanimously.

FURTHER CONSIDERATION OF SENATE BILL 138: Senator Mazurek suggested taking out the provisions by which the Secretary of State's Office sets the fees for the Clerk and Recorders and also suggested putting back the sections which provide for buyer protection to farmers. Senator Turnage recommended taking out the non-uniform amendments referring to the Secretary of State's Office. The Committee felt that the UCC statutory filing fees should be left as they are since no problems have been relayed to them concerning the amount of this fee. Senator Mazurek then suggested that counsel work with Greg Petesch when preparing the amendments.

ACTION ON SENATE BILL 177: Counsel distributed amendments and reviewed them with the Committee. The critical language of the amendment was paragraph 4 which would limit the amount of wages subject to garnishment. This was discussed and the Committee felt that it was necessary to be consistent with federal law. Senator Crippen moved to adopt the amendments as proposed. This motion passed unanimously. Senator Crippen then moved SB177 DO PASS AS AMENDED. This motion passed with Senator Shaw voting in opposition.

ACTION ON SENATE BILL 248: Proposed amendments were distributed and explained by counsel. The main intent was to leave the prosecuting attorney with authority to raise the issue of fitness to proceed and to provide for disposition of those defendants found unfit to proceed. The Committee felt that John Maynard's concerns were being preserved and therefore Senator Berg moved to adopt the amendments as proposed. This motion passed unanimously. Senator Berg then moved SB248 DO PASS AS AMENDED. This motion carried with Senator Crippen voting in opposition.

ACTION ON SENATE BILL 290: Senator Berg drew attention to the fact that Section 13-35-202, as cited in the bill, should be amended to read Section "13-25-202" in the title and on page 2, line 4. This motion was then proposed and adopted unanimously. Senator Brown discussed the philosophy of election of representatives versus senators and stated we would be the only state in the country to adopt different election standards if this bill were passed. He then moved that SB290 DO NOT PASS. Senators Galt, Hazelbaker, Crippen and Shaw opposed the motion. Senator Brown withdrew his motion and Senator Shaw moved SB290 DO PASS AS AMENDED. This motion carried with Senators Brown, Halligan, Mazurek and Berg voting in opposition.

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 2-7-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)			✓
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

February 7,

19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 177

Van Valkenburg

Respectfully report as follows: That Senate Bill No. 177
introduced bill, be amended as follows:

1. Title, line 6.
Strike: "NOT"
2. Title, line 7.
Following: "SUPPORT"
Insert: "ONLY TO THE EXTENT ALLOWED BY FEDERAL LAW"
3. Page 1, line 20.
Strike: "No earnings"
Insert: "Earnings"
4. Page 1, line 22.
Following: "child support"
Insert: "only to the extent allowed by 16 USC §1673"

Continued on Page 2
And, as so amended,

DO PASS

February 7

83

..... 19.....

5. Page 2, line 4.

Following: "section,"

Insert: "except to the extent that these words include a person covered by a judgment or order under subsection (2),"

And, as so amended,

DO PASS

Judiciary Committee
March 4, 1983
Page Eleven

REPRESENTATIVE KEYSER commented that it seems to him that with this language contained in this amendment, you will not absolutely put two drunks together. SHERIFF O'REILLY replied that he does not read it that way. REPRESENTATIVE KEYSER explained that it does not say of the same kind or anything like that; it says, "Persons who are violent, disturbed or inebriated must not be housed with other prisoners." He questioned isn't another drunk another prisoner.

VICE-CHAIRMAN ADDY thought that the intent was clear now, and they just had to work on the proper language.

There were no further questions and the hearing on this bill closed.

SENATE BILL 177

SENATOR VAN VALKENBURG explained that this bill was designed, in essence, to overturn a Montana Supreme Court decision; in September of 1981, the Supreme Court decided a case of White vs. White, which was on appeal from Judge Bennett's court in Helena. In the case, the district court said, and the Supreme Court affirmed, that when there is an order requiring payment of support or alimony, the person entitled to collect support cannot go out and execute on the wages of the defendant if the defendant files an affidavit saying that his wages are necessary for the support of his family. This, he said, is an exemption we have in our statutes right now. He attested that the problem with that is that, in essence, this says that the second spouse and the second set of children are going to benefit to the exclusion of the first spouse and the first set of children. He informed the committee that under his bill earnings for personal services are exempt from judgments or orders for maintenance or child support only to the extent allowed by Section 15 U.S.C. 1673. He noted that this was misprinted in the bill as Section 16 and will need to be amended. MS. DESMOND presented a copy of Section 15 U.S.C. 1673 to the committee. See EXHIBIT F.

There were no proponents and no opponents.

SENATOR VAN VALKENBURG closed.

There were no questions and the hearing on this bill was closed.

Judiciary Committee
March 4, 1983
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Association testified that they were in support of this bill as amended, and it clears up any problems that they have with it.

There were no further proponents and no opponents.

SENATOR VAN VALKENBURG closed.

REPRESENTATIVE EUDAILY wondered about the deleted language on page 6. MR. ROTERING replied that this is the existing language right now. He said that they tried to put some consistency in the bill, but some people felt that the statute should be left as it is right now.

REPRESENTATIVE EUDAILY asked who makes the decision. MR. ROTERING responded that the court does.

There were no further questions and the hearing on this bill was closed.

EXECUTIVE SESSION

SENATE BILL 168

REPRESENTATIVE KEYSER moved that the bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE EUDAILY. The motion carried unanimously.

SENATE BILL 177

REPRESENTATIVE HANNAH moved that the bill BE CONCURRED IN. REPRESENTATIVE VELEBER seconded the motion. REPRESENTATIVE JENSEN moved that the bill be amended on Page 1, line 23, by striking "16" and inserting "15". The motion was seconded by REPRESENTATIVE KEYSER. The motion carried unanimously.

REPRESENTATIVE JENSEN moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE VELEBER seconded the motion. The motion carried unanimously.

SENATE BILL 218

REPRESENTATIVE JENSEN moved that the bill BE CONCURRED IN. REPRESENTATIVE HANNAH seconded the motion.

STANDING COMMITTEE REPORT

March 4, 1983

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **177**

third reading copy (blue)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE THAT INCOME OF
A JUDGMENT DEBTOR NECESSARY FOR THE SUPPORT OF HIS FAMILY IS
NOT EXEMPT FROM EXECUTION TO SATISFY JUDGMENTS OR ORDERS FOR
MAINTENANCE OR CHILD SUPPORT ONLY TO THE EXTENT ALLOWED BY
FEDERAL LAW; AMENDING SECTION 25-13-614, MCA."

Respectfully report as follows: That **SENATE** Bill No. **177**

BE AMENDED AS FOLLOWS:

1. Page 1, line 23.
Strike: "16"
Insert: "15"

AND AS SO AMENDED,
BE CONCURRED IN

XXXX
DO PASS